IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5034 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANHARLAL JIVANLALL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NITIN M AMIN for Petitioner

MR KP RAVAL ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 16/03/2000

ORAL JUDGEMENT

1. This is an application u/s 482 of the Criminal Procedure Code at the instance of the original accused who was charged with having committed an offence u/s 506[2], 507 and 504 - IPC, which are punishable with

imprisonment of less than 7 years. The accused was chargesheeted on 17th September 1991. The charge was framed and the plea recorded on 3rd of March 1993. The list of witnesses presented by the prosecution named seven witnesses who were required to be examined. The first witness for the prosecution, namely the complainant, was examined on 29th October 1998. Soon thereafter on 20th November 1998, the accused gave an application exh.10, wherein the accused invoked the principle laid down by the Supreme Court in the case of Raj Deo Sharma v/s State of Bihar [J. T. 1998 (7) SC Page 1], and prayed that the prosecution evidence be closed and consequently the accused be acquitted.

2. The learned Magistrate, after hearing the learned counsel for the parties and after looking at the record of the case, found on facts that the delay in completing the prosecution evidence is mainly on account of the accused, and that therefore, there is no justification for directing the prosecution evidence to be closed. The application of the accused was therefore rejected.

3. It is this order which is the subject matter of challenge in the present application.

4. I have heard the learned counsel for the respective parties and have also perused the Record & Proceedings of the case, including the Rojnama of the criminal case.

The relevant dates during which the delay is to be reckoned is between 3rd of March 1993 when the charge was framed and the plea of the accused was recorded, upto 29th of October 1998 when the first witness of the prosecution namely, the complainant was examined.

5. With the assistance of learned counsel for the respective parties, I have gone through the Rojnama of the criminal case. Between these two relevant dates mentioned hereinabove, there were 73 adjournments, out of which 29 are attributable to the accused. The other adjournments are not directly attributable to the accused, either because the Court was on leave, prosecution witnesses were not present, the complainant himself was not present, the advocates were on strike etc. From this figures, it would be extremely difficult to state as to whether this delay is directly attributable to the absence of or on account of the accused or not. In order to correctly apply the principle laid down in Raj Deo Sharma's case by the

Supreme Court, it would be beneficial to examine the principles laid down by the Supreme Court in the said case, particularly the summary thereof expressed in para 16 of the said decision.

It is pertinent to note that, as per the principle laid down in Raj Deo Sharma [supra], the Court shall close the prosecution evidence on completion of a period of two years from the date of recording plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not within the said period, and the Court can proceed to the next step provided by law for the trial of the case. It is pertinent to note that the offences with which the accused is charged are punishable with imprisonment of not exceeding seven years, and therefore, the principle laid down by the Supreme Court in sub-para (1) of para 16 of the said decision would entitle the closing of prosecution evidence on completion of two years from the date of recording the plea. On the facts of the case, the application for closing the evidence of the prosecution was given almost 5.1/2 years after the charge was framed and the plea recorded.

However, para 16 sub-para (4) clearly carves out an exception to the broad rule of closing the prosecution evidence. The said exception is where the prosecution evidence cannot be completed within the aforesaid period, and is attributable to the conduct of the accused in protracting the trial, no Court would then be obliged to close the prosecution evidence. Therefore, the crux of the matter would be whether on the facts of the case it can be said that it was the conduct of the accused which was responsible for protraction of the trial. On the facts as aforesaid, the accused was responsible for 29 adjournments out of 73. However, it must be noted that in at least 5 or 6 out of this 29 adjournments, the trial could not have proceeded even if the accused had been present or his advocate had not given an application for adjournment. The trial could not have proceeded because the witnesses were not present or the prosecutor had applied for time. Thus, on these facts, I am satisfied that it cannot be said that the delay in conducting and concluding the trial is attributable to the conduct of the accused.

6. Consequently, the principle laid down by the Supreme Court in the aforesaid decision in para 16 sub-para (1) would apply with full force.

7. It is therefore directed that the prosecution

evidence in Criminal Case No.1153/92 in the Court of learned Metropolitan Magistrate [Court No.20], Ahmedabad is directed to be closed, and the trial shall thereafter proceed to the next stage.

8. Rule is accordingly made absolute to the aforesaid extent.

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